

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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NOTICE OF PROPOSED AMENDMENTS TO LOCAL RULES

The United States Court of Appeals for the First Circuit hereby provides notice that it proposes amendments to Local Rules 3.0(a) and (b), 11.0(b) and (c)(2), 25.0, 27.0(b), 30.0(e), 31.0(a)(1) and (b), 32.0(a), 33.0(a)(1)(A), 35.0(c), 36.0(d), 39.0(b)(1), 40.0(a), and 45.1(c). The amendments are required because of the court's proposed adoption of the Administrative Order Regarding Case Management/Electronic Case Files System ("CM/ECF"). A copy of the relevant provisions of the amended local rules are attached. Deletions are indicated in ~~strike-out~~ print; additions are indicated in *italic* print; and omitted sections are indicated by "* * *".

The Court of Appeals invites public comments on the proposed amendments. Comments should be submitted by July 17, 2009, and addressed to:

Office of the Clerk
U.S. Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, Massachusetts 02210

May 18, 2009

Richard Cushing Donovan, Clerk

Local Rule 3.0. Docketing Statement Required; Dismissals for Want of Diligent Prosecution

- (a) **Docketing Statement Required.** To provide the clerk of the Court of Appeals at the commencement of an appeal with the information needed for effective case management, within 14 days ~~of filing the notice of appeal~~ *after the case is docketed in the court of appeals*, the person or persons taking the appeal must submit a separate statement listing all parties to the appeal, the last known counsel, and last known addresses *and e-mail addresses* for counsel and unrepresented parties. Errors or omissions in this separate statement alone shall not otherwise affect the appeal if the notice of appeal itself complies with this rule.

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- (b) If appellant does not pay the docket fee within 7 days of the filing of the notice of appeal, or does not file the docketing statement or any other ~~paper~~ *document* within the time set by the court, the appeal may be dismissed for want of diligent prosecution.
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Local Rule 11.0. Transmission of the Record, Sealed Documents

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- (b) ~~**Transmission of Original Papers and Exhibits.**~~ The district courts are to transmit the original papers and exhibits when complete without waiting for the filing of the transcript. ***Transmission of the Record.*** In counseled appeals, the district court will transmit to the circuit clerk electronically a copy of the notice of appeal, the order(s) being appealed, and a certified copy of the district court docket report in lieu of transmitting the entire record. Papers and exhibits which are not electronically available will also be transmitted to the circuit clerk. In pro se cases, the entire record will be transmitted to the circuit clerk.

(c) **Sealed Materials.**

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- (2) **Motions to Seal in the Court of Appeals.** In order to seal in the court of appeals materials not already sealed in the district court or agency (e.g., a brief or unsealed portion of the record), a motion to seal must be filed *in paper form* in the court of appeals; parties cannot seal otherwise public documents merely by agreement or by labeling them “sealed.” A motion to seal, which should not itself be filed under seal, must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, that discussion shall be confined to an affidavit or declaration, which may be filed provisionally under seal. A motion to seal may be filed before the sealed material is submitted or, alternatively the item to be sealed (e.g., the brief) may be tendered with the motion and, upon request, will be accepted provisionally under seal, subject to the court’s subsequent ruling on the motion. Material submitted by a party under seal, provisionally or otherwise must be stamped or labeled by the party on the cover “FILED UNDER SEAL.” If the court of appeals denies the movant’s motion to seal, any materials tendered under provisional seal will be returned to the movant. *Motions to seal or sealed documents should never be filed electronically. See Administrative Order Regarding Case Management/Electronic Case Files System.*

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Local Rule 25.0. ~~Facsimile~~ Electronic Case Filing System and Facsimile

(a) *Electronic Case Filing.* Pursuant to Fed. R. App. P. 25(a)(2)(D) and (c)(2), the court has established procedures for electronic filing of documents, with certain exceptions, and authorized electronic service of documents using the court's transmission equipment, as set forth in the Administrative Order Regarding Case Management/Electronic Case Files System and any amendments to that order.

(b) *Facsimile.* The Clerk of Court is authorized to accept for filing papers transmitted by facsimile equipment in situations determined by the Clerk to be of an emergency nature or other compelling circumstances, subject to such procedures for follow-up filing of *electronic or* hard copies, ~~or otherwise~~, as the Clerk may from time to time specify.

Local Rule 27.0. Motions

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(b) **Emergency Relief.** Motions for stay, or other emergency relief, may be denied for failure to present promptly. Counsel who envisages a possible need for an emergency filing, or emergency action by the court, or both, during a period when the Clerk's Office is ordinarily closed should consult with the Clerk's Office at the earliest opportunity. Failure to consult with the Clerk's Office well in advance of the occasion may preclude such special arrangements. *Although documents may be filed electronically at any time through CM/ECF, the filer should not expect that the filing will be addressed outside regular business hours unless the filer contacts the clerk's office in advance to make special arrangements. The business hours for the clerk's office are Mondays through Fridays from 8:30 a.m. to 5:00 p.m.*

Local Rule 30.0. Appendix to the Briefs

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- (e) **Translations.** The court will not receive documents or cited opinions not in the English language unless translations are furnished. Whenever an opinion of the Supreme Court of Puerto Rico (or other Commonwealth of Puerto Rico court) is cited in a brief or oral argument which does not appear in the bound volumes in English, an official, certified or stipulated translation thereof ~~with three conformed copies~~ shall be filed. *Unless the translation is filed electronically in compliance with the court's electronic filing system, three conformed copies should also be filed.* Partial translations will be accepted if stipulated by the parties or if submitted by one party not less than 30 days before the oral argument. Where partial translations are submitted by one party, opposing parties may, prior to oral argument, submit translations of such additional parts as they may deem necessary for a proper understanding of the holding.

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Local Rule 31.0. Filing Briefs

(a) Time to File a Brief.

- (1) Briefing schedules will be set in accordance with Fed. R. App. P. 31(a) ~~except that a reply brief must be filed within 14 days after service of the brief of the appellee~~ *once the record is complete, including any necessary transcripts.* A reply brief may be rejected by the court if it contains matter repetitive of the main brief, or which, in the opinion of the court, should have been in the main brief.

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- (b) **Number of copies.** Only 10 copies of briefs need be filed with the clerk and on motion for cause shown, parties may be allowed to file even fewer copies. The disk required by Local Rule 32.0, *and an electronic copy of the brief filed pursuant to the court's electronic filing system, each* constitutes one copy for the purpose of this rule.
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Local Rule 32.0. Briefs, Petitions for Rehearing, and Other Papers: Computer Generated Disk Requirement

- (a) Where a party is represented by counsel, one copy of its brief, petition for rehearing, and, in addition, all other papers exceeding 10 pages in length must be submitted on a computer readable disk. The disk shall be filed at the time the party's paper filing is made. The brief on disk must be accompanied by nine paper copies of the brief. The disk shall contain the entire brief in a single electronic file. The label of the disk shall include the case name and docket number and identify the brief being filed (i.e. appellant's brief, appellee's brief, appellant's reply brief, etc.) and the file format utilized. *If a brief, petition for rehearing, or other paper exceeding 10 pages in length is filed electronically in compliance with the court's electronic filing system, the filer is not required to file or serve a copy on disk. Parties in counseled cases who obtain an exemption from electronic case filing must continue to file a disk copy of briefs, petitions for rehearing, and all other papers exceeding 10 pages in length.*

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Local Rule 33.0. Civil Appeals Management Plan

Pursuant to Rule 47 of the Federal Rules of Appellate Procedure, the United States Court of Appeals for the First Circuit adopts the following plan to establish a Civil Appeals Management Program, said Program to have the force and effect of a local rule.

(a) Pre-Argument Filing; Ordering Transcript.

- (1) Upon receipt of the Notice of Appeal in the Court of Appeals, the Clerk of the Court of Appeals shall send notice of the Civil Appeals Management Plan to the appellant. Upon receipt of further notice from the Clerk of the Court of Appeals, appellant shall, within ten days:
- (A) file with the Clerk of the Court of Appeals, and serve on ~~Settlement Counsel~~ and all other parties a statement, in the form of the Docketing Statement required by Local Rule 3.0(a), detailing information needed for the prompt disposition of an appeal;

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Local Rule 35.0. En Banc Determination

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- (c) **Number of Copies.** Pursuant to Fed. R. App. P. 35(d), ten copies of a petition for hearing or rehearing en banc or combined Fed. R. App. P. 35(b)(3) document must be filed with the clerk, including one copy on a computer generated disk, *unless the petition for hearing or rehearing en banc is filed electronically in compliance with the court's electronic filing system*. The disk must be filed regardless of page length but otherwise in accordance with Local Rule 32.0.

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Local Rule 36.0. Opinions

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- (d) **Copies of Opinions.** Unless subject to a standing order which might apply to classes of subscribers, such as law schools, the charge for a copy of each opinion, after one free copy to counsel for each party, is \$5.00. *Free copies of opinions are available on the court's website at www.cal.uscourts.gov.*

Local Rule 39.0. Taxation of Reproduction Costs

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- (b) Costs may be recovered for reproducing the following number of copies, unless the court directs filing of a different number:
- (1) **Briefs.** Nine copies of each brief plus two for the filer and two for *each party required to be served with paper copies of the brief*. ~~each unrepresented party and each separately represented party~~. See Local Rule 31.0(b).

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Local Rule 40.0. Petition for Panel Rehearing

- (a) **Number of Copies.** Ten copies of a petition for panel rehearing must be filed with the clerk, including one copy on computer generated disk, *unless the petition for panel rehearing is filed electronically in compliance with the court's electronic filing system.* The disk must be filed regardless of page length but otherwise in accordance with Local Rule 32.0.

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Local Rule 45.1. The Clerk

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- (c) **Copies of Opinions.** Unless subject to a standing order which might apply to classes of subscribers, such as law schools, the charge for a copy of each opinion, after one free copy to counsel for each party, is \$5.00. *Free copies of opinions are available on the court's website at www.cal.uscourts.gov.*
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